

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

STATE OF WASHINGTON,

No. 32950-6-II

Respondent,

v.

VERNA JAYNE LOVE,

UNPUBLISHED OPINION

Appellant.

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Van Deren, A.C.J. – Verna Jayne Love appeals her conviction of unlawful possession of a controlled substance (methamphetamine) with intent to deliver, arguing that the trial court erred when it denied her motion to suppress evidence discovered during a warrantless search of a briefcase that was inside her vehicle. We affirm.

**FACTS**

On July 25, 2004, State Trooper Darren Lattimer contacted Love after determining that she had been speeding and during a subsequent warrantless search discovered methamphetamine, a scale, and six twenty dollar bills inside a briefcase that had been in her car. The State charged her with one count of unlawful possession of methamphetamine with intent to deliver.

Love moved to suppress the evidence found in the briefcase, asserting that (1) the initial stop was pretextual, (2) her initial seizure was unlawful, (3) Lattimer’s request to search was

unreasonable, and (4) her consent was not voluntary.<sup>1</sup> Lattimer, Love, a store clerk, and Love's brother David Love, testified at the suppression hearing.

In an oral ruling, the trial court found Lattimer's testimony more credible than Love's or her brother's testimony and concluded that Love had consented to the searches. The trial court also concluded that her consent was voluntary, that she had the authority to consent, and that the searches did not exceed the scope of her consent.

Love moved for reconsideration of the trial court's oral ruling. Following a hearing, the trial court denied the motion for reconsideration and entered the following written findings of fact and conclusions of law:

#### THE UNDISPUTED FACTS

1. On July 25, 2004, at approximately 7:45 a.m., the defendant was driving a motor vehicle southbound on SR 161 near 128th Street South. Trooper Darin Lattimer observed that the vehicle appeared to be traveling in excess of the posted 35 mph speed limit. Trooper Lattimer activated his moving radar which indicated the speed of the defendant's vehicle to be 47 mph.
2. The defendant turned into the parking lot of the 7-eleven store at 128th Street South and State Route 161 in Pierce County, Washington.
3. Trooper Lattimer contacted the defendant and advised her of the reason for the stop and instructed her and the passenger, later identified as David W. Love, to get back into the car for officer safety reasons.
4. The defendant appeared nervous and seemed eager to exit the vehicle.
5. The defendant was asked for her license and she said she did not have it on her, but she did have one in the trunk. The defendant retrieved the vehicle registration, insurance information, and a temporary paper driver's license from the glove box and provided the documents to Trooper Lattimer.
6. The paper driver's license was faded and the picture was not easily distinguishable, but the license had not yet expired and was still valid.
7. The defendant stated that she and her passenger were just stopping to get some beer or ice and that she was not aware of her speed.
8. While speaking with the defendant, Trooper Lattimer noticed an odor of intoxicants coming from within the vehicle.
9. Trooper Lattimer also saw a blue duffle bag in the rear seat and a black

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<sup>1</sup> Love also moved to suppress any statements she made to Lattimer. The trial court denied that motion. She does not challenge that ruling on appeal.

- leather briefcase on the floor behind the defendant's seat.
10. The defendant was asked to exit the vehicle to speak with the Trooper about her license and the odor and to determine if the odor was coming from the defendant or from within the vehicle. When the defendant exited the vehicle, the odor of intoxicants became stronger.
  11. Trooper Lattimer asked the defendant if there was any alcohol in the car and if she had been drinking. The defendant stated that she had not been drinking, but there could be spilled alcohol in the vehicle.
  12. The defendant returned to her vehicle while Trooper Lattimer conducted a check of her license status.
  13. When Trooper Lattimer contacted the defendant again, she was sitting in her vehicle. Trooper Lattimer returned her license and advised her she would not be cited for speeding.
  14. Trooper Lattimer conducted a search of the vehicle and located the black leather briefcase on the floor behind the driver's seat. When asked about the briefcase, the defendant stated that the briefcase belonged to her, but had been in the vehicle all night and her friend could have put something in it.
  15. Trooper Lattimer opened the briefcase. He immediately observed several large ziplock baggies containing white powder. There was also a black digital scale and six twenty dollar bills scattered loosely among the baggies. There was a strong chemical odor coming from the briefcase. Stuffed in a side pocket of the briefcase were health documents addressed to Verna J. Love. There was a bottle of prescription medication with her name on it.
  16. At approximately 8:00 a.m., Trooper Lattimer placed the defendant under formal arrest for the possession of a controlled substance and advised the defendant of her *Miranda* rights.
  17. The defendant stated that she did not know the drugs were in her briefcase and that anyone could have put them there. After advising the defendant that the scale would be fingerprinted along with the plastic baggies, the defendant admitted that all the items in the briefcase belonged to her.
  18. Trooper Lattimer asked if all the meth was for her and she said no. The defendant stated that she sold it to "get by" why [sic] she looked for work. The defendant said her brother had no knowledge of the drugs and she was only taking him to buy some beer.
  19. The defendant was transported to Pierce County Jail and booked.

#### THE DISPUTED FACTS

1. The defendant testified that Trooper Lattimer never requested permission to search her vehicle and that she never gave consent to Trooper Lattimer to search the vehicle.
2. Trooper Lattimer testified that after he asked the defendant to exit the vehicle and spoke with her about the odor of alcohol, he asked if there were any weapons or drugs in the car. The defendant hesitated for a few seconds, took a small step backwards, and looked towards the ground

saying “I don’t know, there could be.” Trooper Lattimer testified that the defendant said a friend had her car all night and might have left something in it. Trooper Lattimer testified that the defendant quickly stated “you can look if you want.”

3. Trooper Lattimer testified that when he returned from checking the defendant’s driving status, he found the defendant sitting in her vehicle and advised her that she would not be cited for speeding. Trooper Lattimer advised the defendant that she was free to go, but that he would like to search her vehicle if she would allow it. Trooper Lattimer advised the defendant that her consent was voluntary and that she was free to leave. The defendant said “sure” and exited the vehicle.
4. Trooper Lattimer located the black leather briefcase on the floor behind the driver’s seat. When asked, the defendant stated that the briefcase belonged to her, but had been in the vehicle all night and her friend could have put something in it. Trooper Lattimer asked if he could open the briefcase and the defendant said yes.

#### FINDINGS AS TO DISPUTED FACTS

1. The testimony of the defendant and her brother, David Love, was not credible.
2. The testimony of Trooper Lattimer was credible.
3. The defendant gave Trooper Lattimer consent to search the vehicle and to open the briefcase. The defendant gave her consent voluntarily.

#### REASONS FOR ADMISSIBILITY OR INADMISSIBILITY OF THE EVIDENCE

1. The items found in the briefcase are admissible because the defendant voluntarily gave her consent to Trooper Lattimer to search the vehicle and the briefcase.

Clerk’s Papers 50-54.

After the trial court denied her motion for reconsideration, Love waived her right to a jury trial, and the case was heard by the court on stipulated facts.<sup>2</sup> The trial court found her guilty as charged. Love appeals.

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<sup>2</sup> Love specifically reserved the right to challenge the trial court’s denial of her suppression motion.

## DISCUSSION

Relying on article I, section 7 of our State Constitution, Love contends that the trial court erred when it denied her motion to suppress.<sup>3</sup> She argues that (1) at the time of the search, she was still being detained pursuant to the traffic stop and the traffic stop did not justify Lattimer's search of the car and briefcase; (2) she was unlawfully detained after he decided not to issue a citation, vitiating any consent she may have given; and (3) her consent was not voluntary.<sup>4</sup>

### I. Standard of Review

We review a trial court's denial of a suppression motion by determining whether its findings of fact are supported by substantial evidence<sup>5</sup> and whether the findings support the trial court's conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999); *State v. Teran*, 71 Wn. App. 668, 671, 862 P.2d 137 (1993). Credibility determinations are within the discretion of the trial court and we not review such findings. *In re Pers. Restraint of Davis*, 152

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<sup>3</sup> "It is well settled that article I, section 7 of the Washington Constitution provides greater protection to individual privacy rights than the Fourth Amendment to the United States Constitution." *State v. Jones*, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002). Further, in the context of warrantless stops of automobiles for the purpose of investigation, it is well established that the Washington Constitution provides greater protection than the Fourth Amendment. *See State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999). Therefore, we need not engage in an analysis under *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), before applying article I, section 7, in this case. *Ladson*, 138 Wn.2d at 348.

<sup>4</sup> In her brief, Love also appears to discuss pretextual stops. A pretextual stop occurs when a law enforcement officer pulls over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the alleged traffic violation. *Ladson*, 138 Wn.2d at 349. To determine whether a pretextual stop has occurred, we examine the totality of the circumstances, including the subjective intent of the officer and the objective reasonableness of the officer's behavior. *Ladson*, 138 Wn.2d at 358-59. Here, we see no indication of pretext. Lattimer testified that he initially stopped Love to investigate a speeding violation and there was no evidence suggesting that this was not his actual intent at the time he initiated the stop. Accordingly, to the extent Love is raising a pretext argument it has no merit.

<sup>5</sup> Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Wn.2d 647, 682-83, 101 P.3d 1 (2004). Because Love does not challenge any of the trial court's findings of facts, they are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

## II. Article I, Section 7

The Washington State Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, § 7. This provision protects “those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.” *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984). A warrantless search or seizure is considered per se unconstitutional unless it falls within one of the few exceptions to the warrant requirement. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). When examining police-citizen interactions, we must first determine whether a warrantless search or seizure has taken place, and if it has, whether the action was justified by an exception to the warrant requirement. *State v. O’Neill*, 148 Wn.2d 564, 574, 62 P.3d 489 (2003).

In this instance, it is clear that Lattimer did not have a warrant; accordingly, the only remaining issue is whether the searches fall under an exception to the warrant requirement. “In the context of a search, consent is a form of waiver.” *State v. Morse*, 156 Wn.2d 1, 8, 123 P.3d 832 (2005). Accordingly, the key issue here is whether Love’s consent was valid.

## III. Seizure

Although the validity of Love’s consent is the crux of this appeal, she first argues that she was illegally seized at the time of the searches and that the traffic violation alone did not justify the searches. She correctly asserts that a traffic violation alone generally does not provide

justification for a warrantless search of a vehicle, *Ladson*, 138 Wn.2d at 352-53, but we do not agree that she was detained on the traffic violation when Lattimer asked for permission to search or when the searches took place.

A seizure or detention occurs when, considering all the circumstances, an individual's freedom of movement is restrained and a reasonable person would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority. *O'Neill*, 148 Wn.2d at 574. In making this determination, we look objectively at the law enforcement officer's actions. *O'Neill*, 148 Wn.2d at 574 (citing *State v. Young*, 135 Wn.2d 498, 501, 957 P.2d 681 (1998)).

Love argues that because Lattimer ordered her in and out of the car several times and told her to "stay put," a reasonable person would not have felt free to terminate the encounter and leave. Br. of Appellant at 9-10. Although Lattimer may have initially seized Love by telling her to get in and out of her car and telling her to "stay put," the findings and the record show that these events occurred well before he told her that he was not going to issue a citation and that she was free to go even if she did not give him permission to search. Moreover, none of the trial court's findings suggest that he said or did anything inconsistent with his statement to her indicating that she was free to leave even if she did not give him permission to search. Thus, we cannot say a reasonable person would not have felt free to decline Lattimer's request for permission to search and leave. Accordingly, the trial court's findings support the conclusion that the initial traffic stop ended before Lattimer requested permission to search and that Love was not seized when he requested permission to search. Because she consented to the searches, the issue becomes whether her consent was valid, not whether the searches were justified by the traffic

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stop.

#### IV. Validity of Consent

##### A. Continued Detention

Citing *State v. Armenta*, 134 Wn.2d 1, 948 P.2d 1280 (1997); *State v. Henry*, 80 Wn. App. 544, 910 P.2d 1290 (1995); *State v. Cantrell*, 70 Wn. App. 340, 853 P.2d 479 (1993), *reversed in part on other grounds*, 124 Wn.2d 183, 875 P.2d 1208 (1994); and *State v. Tijerina*, 61 Wn. App. 626, 811 P.2d 241 (1991), Love next appears to argue that any consent she gave was invalid because Lattimer’s “request to search the car constituted an unreasonable continued detention.” Br. of Appellant at 15.

When a law enforcement officer makes a valid stop for a traffic infraction, the officer may detain the driver for the time reasonably necessary to verify the driver’s identity; to determine the status of the driver’s license, the driver’s insurance identification card, and the vehicle’s registration; and to complete a notice of infraction. RCW 46.61.021(2); *State v. Cole*, 73 Wn. App. 844, 848, 871 P.2d 656 (1994). The officer may not, however, detain the driver longer than is necessary to issue a citation, unless he has a reasonable, articulable suspicion of additional criminal activity. *Tijerina*, 61 Wn. App. at 629; *see also Henry*, 80 Wn. App. at 550; *Cantrell*, 70 Wn. App. at 344. When a law enforcement officer unlawfully extends a detention based on a traffic stop beyond the purpose of that stop without a reasonable suspicion that criminal activity has or is about to occur, the illegal detention may vitiate any consent to search given by the illegally detained person. *Tijerina*, 61 Wn. App. at 629-30; *see also Henry*, 80 Wn. App. at 551-53; *Cantrell*, 70 Wn. App. at 344. Several factors are relevant in evaluating whether consent given following an illegal detention is tainted by the illegal seizure, including: “(1) the temporal proximity of the detention and subsequent consent, (2) the presence of significant intervening

circumstances, (3) the purpose and flagrancy of the official misconduct, and (4) the giving of *Miranda* warnings.” *Tijerina*, 61 Wn. App. at 630; *see also Armenta*, 134 Wn.2d at 17 (quoting *State v. Soto-Garcia*, 68 Wn. App. 20, 27, 841 P.2d 1271 (1992)).

Love’s reliance on *Armenta*, *Henry*, *Cantrell*, and *Tijerina*, is misplaced. Unlike here, the law enforcement officers in those cases did not terminate the initial detentions and tell the defendants that they were free to go before asking for consent to search their vehicles. Thus, there were no intervening circumstances and the subsequent questioning and consent amounted to a continuation of the initial detention after the purpose of that detention no longer existed. Here, as discussed above, Love was not being detained when Lattimer asked for permission to search. Furthermore, to the extent the later search served as a new detention, the fact he specifically told her she was not being cited and was free to go before obtaining consent is an intervening circumstance that precludes us from finding that Lattimer’s request for consent was an unlawful continuation of the initial traffic stop.<sup>6</sup> Accordingly, she does not show that her consent was vitiated by an unlawful detention, and the only remaining question is whether her consent was otherwise valid.

#### B. Voluntary Consent

To determine whether consent is valid, we ask three questions, whether: (1) the consent was voluntary, (2) the person giving consent had the authority to consent, and (3) the search exceeded the scope of the consent. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004) (citing *State v. Thompson*, 151 Wn.2d 793, 803, 92 P.3d 228 (2004); *State v. Nedergard*,

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<sup>6</sup> We note that if Lattimer had searched the car when Love initially told him he could do so, *Armenta*, *Henry*, *Cantrell*, and *Tijerina* would arguably apply. But because he did not accept her initial invitation to search the car, whether that consent was valid is not at issue.

51 Wn. App. 304, 308, 753 P.2d 526 (1988)). Love does not assert that she lacked the authority to consent or that the searches exceeded the scope of her consent; accordingly, we need only address whether her consent was voluntary.<sup>7</sup>

Whether consent to a search is voluntary is a question of fact to be determined from the totality of the circumstances, including (1) whether *Miranda* warnings were given prior to consent, (2) the education and intelligence of the consenting person, and (3) whether the consenting person was advised that she could refuse to consent. *Reichenbach*, 153 Wn.2d at 132 (citing *State v. Bustamante-Davila*, 138 Wn.2d 964, 981-82, 983 P.2d 590 (1999); *State v. Shoemaker*, 85 Wn.2d 207, 212, 533 P.2d 123 (1975)). We may also “weigh any express or implied claims of police authority to search, previous illegal actions of the police, the defendant’s cooperation, and police deception as to identity or purpose.” *Reichenbach*, 153 Wn.2d at 132 (citing *State v. Flowers*, 57 Wn. App. 636, 645, 789 P.2d 333 (1990)). No one factor is dispositive. *Reichenbach*, 153 Wn.2d at 132; *see also State v. McCrorey*, 70 Wn. App. 103, 112, 851 P.2d 1234 (1993).

Love argues that her consent was not voluntary because (1) Lattimer did not advise her of her *Miranda* rights before she consented; (2) she is not highly sophisticated; (3) his actions were “deceptive,” Br. of Appellant at 15; and (4) he did not tell her that she had the right to “refuse” to consent, Br. of Appellant at 13-14.

The trial court’s findings do show that Lattimer did not advise Love of her *Miranda* rights prior to asking for consent. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694

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<sup>7</sup> Because Lattimer did not accept Love’s initial offer to allow him to search the car and, as discussed above, her later consent occurred after she was free to leave, we confine this discussion to the circumstances related to her later consent in response to his requests.

(1966). But the lack of prior *Miranda* warnings does not, by itself, negate consent. *State v. Lyons*, 76 Wn.2d 343, 345, 458 P.2d 30 (1969); *Flowers*, 57 Wn. App. at 645-46.

Love next asserts that her consent was not valid because she has only a high school education and has worked as a landscaper. But there is nothing in the record establishing that she has worked as a landscaper, so we need not consider that assertion. Further, even if we did consider her profession, a person with a high school education who works as a landscaper is not inherently unsophisticated and there is nothing in the record suggesting that she lacked the capacity to understand that she was not required to consent to the search.

Love contends that although Lattimer told her that her permission to search would be voluntary, this was not sufficient to inform her that she had the right to refuse his request. We disagree. Although he did not specifically tell her that she had the right to refuse his request, he not only told her that her permission would be voluntary, he also told her that she was free to leave if she did not want to give him permission to search the car. This clearly informed her that she was not required to consent and, by extension, that she was free to refuse to consent.

Additionally, there is nothing in the record suggesting that Lattimer deceived or coerced Love in any way or that he engaged in any prior illegal actions. He terminated her initial detention when he decided not to issue a citation by telling her that she was free to go and he did not ask for permission to search the car or briefcase until after doing so. Nor did he accept her initial invitation to search the car when he arguably lacked the authority to do so or claim that he had the authority to search the car or the briefcase without her consent. Furthermore, although he did not tell her that she could limit the scope of his search, the findings show that he asked for additional permission when he wanted to open the briefcase, and this demonstrates that he

recognized that her initial consent was limited. Finally, her act of offering him the opportunity to search her car while the traffic stop was still in effect, also supports the conclusion that her later consent was voluntary. Based on these facts, we conclude that the totality of the circumstances establishes that Love's consent was voluntary.

Because Love's consent was voluntary and she was not wrongfully detained when she gave her consent, the trial court did not err when it denied her motion to suppress the evidence found during the search of the car and the briefcase.

Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Van Deren, A.C.J.

We concur:

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Armstrong, J.

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Hunt, J.